

PT 98-53

Tax Type: **PROPERTY TAX**
Issue: **Charitable Ownership/Use**

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**HOUSING OPPORTUNITIES &
MAINTENANCE FOR THE
ELDERLY INC.,
APPLICANTS**

v.

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE**

Docket No. 94-16-1405

**Real Estate Exemption for
the 1994 Tax Year**

P.I.N. 11-29-317-048

Cook County Parcel

**Robert C. Rymek
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: William J. Quinlan and Mary M. Donners of Gardner, Carton & Douglas on behalf of the applicant.

SYNOPSIS: At issue is whether Cook County Parcel Index Number 11-29-317-048 (hereinafter the “subject property” or “subject parcel”) should be exempt from 1994 real estate taxes under section 15-65 of the Property Tax Code¹ which exempts all property owned by “institutions of public charity” when such property is “actually and exclusively used for charitable or beneficent purposes[.]” 35 ILCS 200/15-65 (1994).

This controversy arose as follows:

¹ In People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), our supreme court held property tax exemption issues necessarily depend on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks

The applicant, Housing Opportunities and Maintenance for the Elderly (hereinafter “HOME”) filed a Property Tax Exemption Complaint with the Cook County Board of (Tax) Appeals on June 30, 1995, seeking a property tax exemption for the subject property for the 1994 tax year. On August 11, 1995, the Board recommended that the applicant’s exemption request be denied. On January 25, 1996, the Illinois Department of Revenue (hereinafter the “Department”) denied the exemption request concluding that the subject property was not in exempt ownership. The applicant filed a timely appeal from the Department’s denial of exemption. On April 7, 1998, a formal administrative hearing was held at which evidence was presented. Following a careful review of all the evidence it is recommended that the subject parcel be exempted from 1994 real estate taxes.

FINDINGS OF FACT

1. Dept. Gr. Ex. No. 1 and Dept. Ex. No. 2 establish the Department’s jurisdiction over this matter and its position that the subject property was not in exempt ownership.
2. The subject property is located at 7314 North Sheridan Road, in Chicago, Illinois. Dept. Gr. Ex. No. 1.
3. The subject property is improved with a five-story building, which is known as the Nathalie Salmon House (hereinafter the “NSH”). Tr. pp. 16-17.

exemption from 1994 real estate taxes. Therefore, the applicable provisions are those in the Property Tax Code (35 ILCS 200/1 *et seq.*).

4. The applicant acquired title to the subject property via a deed in 1992 and began construction of the NSH in early 1993. App. Ex. No. 2; Dept. Ex. No. 5.
5. Construction of the NSH was completed in May 5, 1994. Dept. Ex. No. 5.
6. NSH is not a nursing home, but rather an intergenerational housing facility for low-income people. Tr. pp. 20-24
7. The ground floor of the NSH contains a variety of community rooms such as a dining area, a library, and a lounge. These rooms are open to all residents of the NSH. App. Ex. 6A, 6B.
8. The ground floor also contains one three-bedroom apartment, which is occupied by the custodian and his family. App. Ex. 6A, 6B.
9. The second, third, and fourth floors each contain 11 apartments. These 11 apartments include 2 studio apartments, six one-bedroom apartments, two two-bedroom apartments, and one three-bedroom apartment. One of the studio apartments on each floor is occupied by a young single person who receives a rent reduction in exchange for being present in case of an emergency and providing assistance to the facility's elderly residents. A low-income family whose rent is subsidized occupies the three-bedroom apartment on each floor. The remaining nine apartments on each floor are occupied by low-income elderly people. Tr. pp. 22-25, 57; App. Ex. No. 6A, 6B; Dept. Gr. Ex. No. 1 Doc. A.
10. The fifth floor contains 18 bedrooms and several common areas. Elderly, frail people occupy 14 of these bedrooms. The remaining four bedrooms

are each occupied by an assistant who pays no rent in exchange for helping care for the frail elderly who live on the fifth floor. App. Ex. No. 6A, 6B: Tr. pp. 55-56.

11. Each elderly frail resident has a “call” or “panic” button, which sets off an alarm in the custodian’s apartment. The alarm also sounds near the rooms of the fifth-floor assistants. Tr. pp. 48-51.
12. None of the elderly residents who reside in the apartments on the second, third, and fourth floors pay more than 30% of their income for rent. Those who reside on the fifth floor and receive extra services are asked to pay \$690 a month in rent. However, those residents of the fifth floor who are unable to pay that much are asked to pay 80% of their Social Security income. Residents are never asked to pay a deposit or founders fee and those who are unable to pay their rent are never evicted. Tr. pp. 57, 69-70, 74.
13. The custodian is paid a salary of \$22,000 per year and pays no rent for his apartment. He is required to live there as a condition of his employment and monitors the emergency alarm at night. Tr. pp. 58-60.
14. Prior to the filing of the instant Property Tax Exemption Complaint, the applicant sought exemption for the subject property from 1993 real estate taxes in Department Docket No. 93-16-419. A formal hearing was held, following which it was concluded that:

- (a) the applicant qualified as a charitable institution for property tax exemption purposes;

- (b) the applicant owned the subject property;
- (c) that land portion of the subject property was exempt from 1993 taxes;
- (d) the building portion of the subject property (i.e. the NSH) could not be exempted from 1993 property taxes because it was not subject to taxation in 1993 due to the fact that construction of the building was not completed until May of 1994.

Dept. Ex. No. 5.

- 15. The applicant operates another, similar, intergenerational housing facility which is known as the Pat Crowley House. The Pat Crowley House was granted a property tax exemption by the Department in Docket No. 83-16-198. Dept. Ex. No. 5, Tr. p. 12.
- 16. The applicant is organized under the General Not For Profit Corporation Act and has no stock or profits. Tr. p. 40; App. Ex. No. 7.
- 17. The NSH could not operate based solely upon the rental income it receives. In 1994 over 83% of applicant's funding came from public and private charity while less than 15% came from payments from residents. Tr. pp. 33-34; App. Ex. No. 11.
- 18. Housing at the NSH is open to anyone who applies, although there is a waiting list. Tr. pp. 30-34.
- 19. The deed originally submitted to the Department with the instant exemption application did not accurately reflect the ownership of the

subject property in 1994. Subsequent to the Department's denial of applicant's exemption request, the applicant, on its own initiative, submitted an updated deed showing ownership of the subject property by the applicant. Dept. Ex. No. 3.

CONCLUSIONS OF LAW

An examination of the record establishes that the applicant has demonstrated by the presentation of testimony, exhibits, and argument, evidence sufficient to warrant an exemption from property taxes for the 1994 tax year. Accordingly, under the reasoning given below, the determinations by the Department that the subject property did not qualify for exemption should be reversed. In support thereof, I make the following conclusions:

Article IX, section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, article IX, section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation

and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist.1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which exempts all property of “institutions of public charity” when such property is “actually and exclusively used for charitable or beneficent purposes” (35 ILCS 200/15-65 (1994)). In the case at hand, the applicant contends that the subject property should be exempt because it (1) is an institution of public charity; (2) owns the subject property; and (3) actually and exclusively² used the subject property for charitable purposes.

The Department denied the instant exemption request solely on the basis that the subject property was not in exempt ownership. This does not mean that the Department concluded the applicant did not qualify as an institute of public charity. In fact, in Department Docket Nos. 93-16-419 and 83-16-198, the Department recognized that the applicant does qualify as an institution of public charity for property tax exemption purposes. See Dept. Ex. No. 5. Rather, the Department’s conclusion that the subject property was not in exempt ownership was simply a result of the fact that the applicant initially filed an old deed with their 1994 application for exemption. The old deed did not show the applicant as the owner of the subject property and thus, the exemption application was denied. The applicant has now submitted the proper deed, which shows

² The word “exclusively,” when used in tax exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Gas Research Institute v. Dep’t of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987); Pontiac Lodge No. 294, A.F. & A.M. v. Dep’t of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1993).

that the applicant acquired ownership of the subject property in 1992.³ Accordingly, it is now clear that the applicant who is a charitable institution owns the subject property. Thus, the only remaining question is whether the applicant actually used the subject property exclusively for charitable or beneficent purposes.

“The concept of property use which is exclusively charitable does not lend itself to easy definition. Therefore each individual claim for tax exemption must be determined from the facts presented.” Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156. In Methodist Old Peoples Home, our supreme court noted that charitable use could be evidenced by, *inter alia*: dispensation of charity to all who need and apply for it; funding derived from public or private charity; and benefits accruing to an indefinite number of persons. *Id.* at 157.

Here, the applicant used the subject property to provide housing to low-income individuals, primarily the elderly. This housing was available to all who needed and applied for it, subject only to the practical limitations of availability. Residents were never asked to pay a deposit or founders fee and those who were unable to pay their rent were never evicted. Moreover, the vast majority of the applicant’s funding came from public and private donations as opposed to from rental income. Under these circumstances, I conclude that the subject property was actually used primarily for charitable and beneficent purposes.

Because the applicant is an institution of public charity, owns the subject property, and uses the subject property primarily for charitable purposes, I conclude that the subject property is entitled to exemption. I note that this conclusion is consistent with

³ This evidence is consistent with the finding in Department Docket No. 93-16-419

previous determinations of the Department with regard to the subject parcel for prior tax years (see Department Docket No. 93-16-419) and with regard to a similar parcel owned by the applicant and used for similar purposes (see Department Docket No. 83-16-198).

Finally, I note that the exemption includes not only those portions of the NSH which were occupied by low income persons, but also that portion of the building which was occupied by the caretaker and the assistants because those individuals were required to live at the NSH in order to provide 24 hour-a-day assistance to residents and monitor of potential emergency situations. See McKenzie v. Johnson, 98 Ill. 2d 89 (1983); Girl Scouts of Du Page County v. Dep't of Revenue, 189 Ill. App. 3d 858 (2nd Dist. 1989); Benedictine Sisters of the Sacred Heart v. Dep't of Revenue, 155 Ill. App. 3d 325 (2nd Dist. 1987) 171 Ill. App. 3d 1082 (2nd 1988); and Lutheran Child & Family Services v. Dep't of Revenue, 160 Ill. App. 3d 420 (1987) (Portions of property used as residences of domestic employees, maintenance personnel, and the are subject to exemption if the resident-employee either: (1) performs an exempt function and is required by those same duties to live in the residence; or, (2) performs duties in furtherance of the institution's exempt purpose in the building.).

WHEREFORE, for the reasons set forth above, I recommend that the land portion of Cook County Parcel Index Number 11-29-317-048 be granted an exemption for the entire 1994 tax year and that the NSH be granted an exemption from May 5, 1994, until December 31, 1994.⁴

wherein the applicant was found to be the owner of the subject property in 1993.

⁴ Because the NSH was not substantially completed or used until May 5, 1994, the NSH was not subject to assessment prior to that date. See 35 ILCS 2009-180 (Stating that new buildings are only taxable from the date "substantially completed or initially occupied or initially used, to December 31 of that year."). Since the NSH was not used and did not

Date _____

Robert C. Rymek
Administrative Law Judge

become taxable until May 5, 1994, the NSH could not be exempted prior to that time.
Dept. Ex. No. 5.